

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

In re:

THEODORE CHARLES WENZEL,

Case No. 13-15445

Debtor.

THEODORE CHARLES WENZEL
2203 S. Osborne Ave.
Janesville, WI 53546,

Plaintiff,

vs.

GREEN TREE SERVICING LLC
as authorized servicer for Fannie Mae
P.O. Box 6154
Rapid City, SD 57709-6154,

Adversary Case No.

Defendant.

**COMPLAINT DETERMINING THE VALIDITY OF A CLAIMED
LIEN UNDER RULE 7001(2)**

Theodore Charles Wenzel, debtor in this bankruptcy, by his attorney, Roger Merry, as and for a complaint against the Defendant, Green Tree Servicing LLC as authorized servicer for Fannie Mae, alleges and shows the Court as follows:

PARTIES

1. Theodore Charles Wenzel (the "Plaintiff") is the Debtor in these bankruptcy proceedings.
2. Green Tree Servicing LLC as authorized servicer for Fannie Mae (the "Defendant") upon information and belief is a banking corporation licensed to do business under the laws of the State of Wisconsin.

JURISDICTION

3. This is an adversary proceeding brought pursuant to the Federal Rules of Bankruptcy Procedure 7001 and 11 U.S.C. §542.
4. This is a core proceeding as defined by 28 U.S.C. §157.

5. Venue is proper in this district and division pursuant to 28 U.S.C. § 1409.

6. The Court has jurisdiction over the subject matter of this adversary proceeding pursuant to 28 U.S.C. §157 and §1334(a), (b) and (e) including jurisdiction over all property, wherever located, of the Debtor as of the commencement of this case and of the property of the estate.

7. Pursuant to 11 U.S.C. § 105 this Court may issue any order, process of judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.

FACTUAL ALLEGATIONS

8. The Debtor filed a voluntary petition under Chapter 7 of Title 11, United States Code on November 8, 2013 (the "Petition Date") in the United States Bankruptcy Court for the Western District of Wisconsin as Case No. 13-15445.

9. The property of the estate includes the Debtor's residence at 2203 S. Osborne Avenue, Janesville, Wisconsin.

10. The mortgage on the property was prepared by Countrywide Bank. It did not contain a legal description.

11. The above-referenced mortgage made reference to an Exhibit A, but there was no Exhibit A attached to the mortgage and no document with a legal description was ever filed with the Register of Deeds Office in the county in question.

12. Regarding the above mortgage, there is no chain of title sufficient to establish constructive notice of the existence of the claimed lien.

13. That at the time of the filing of the bankruptcy petition, the property was not subject to a valid lien. The value of the property is approximately \$85,000.00 after deducting anticipated sale costs, and the Debtor is entitled to exempt \$75,000.00 of the property value.

14. The Debtor has agreed to pay to the estate \$8,536.00 to purchase the property from the estate as per the attached stipulation.

15. On May 14, 2014, Green Tree Servicing LLC, as authorized servicer for Fannie Mae, filed a proof of claim asserting a security interest in the property.

16. Said claim was objected to by the Debtor, no response was made by Green Tree Servicing LLC, and an Order Denying Claim was filed on December 2, 2014.

17. This adversary proceeding is brought by the Debtor to determine that the lien is not valid and the Debtor would own the property free and clear of all encumbrances upon completion of his obligations under the attached stipulation with the trustee.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

- a) Determining that the Defendant's claimed lien is invalid.
- b) For an order awarding the Plaintiff title to the property free and clear of any and all encumbrances of the Defendant and forever barring the Defendant from making any claim to the property.
- c) For such other and further relief as the Court deems just and equitable.

Dated this 17th day of July, 2015.

Respectfully submitted,
MERRY LAW OFFICES

/s/_____
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